

ZONING BOARD OF APPEALS

**Tuesday, May 19, 2009
6:30 P.M. – City Council Chambers
Rockford City Hall, 425 East State Street**

Present:

ZBA Members: Alicia DiBenedetto Neubauer
Aaron Magdziarz
Dan Roszkowski
Julio Salgado
Scott Sanders
Craig Sockwell

Absent:

Staff: Jessica Roberts - Planner II
Sandra Hawthorne – Administrative Assistant
Jon Hollander – City Engineer, Public Works
Attorney Kerry Partridge - City Attorney

Others: Reid Montgomery, Director Community & Economic Development
Kathy Berg, Stenographer
Applicants and Interested Parties

Acting Chairman Roszkowski called the meeting to order at 7:10 PM.

Sandra Hawthorne explained the format of the meeting will follow the Boards Rules of Procedure generally outlined as:

The Chairman will call the address of the application.

- The Applicant or representative are to come forward and be sworn in.
- The Applicant or representative will present their request before the Board
- The Board will ask any questions they may have regarding this application.
- The Chairman will then ask if there are any Objectors or Interested Parties. Objectors or Interested Parties are to come forward at that time, be sworn in by the Chairman, and give their name and address to the Zoning Board secretary and the stenographer
- The Objector or Interested Party will present all their concerns, objections and questions to the Applicant regarding the application.
- The Board will ask any questions they may have of the Objector or Interested Party.
- The Applicant will have an opportunity to rebut the concerns, answer questions of the Objector or Interested Party
- No further discussion from the Objector or Interested Party will occur after the rebuttal of the Applicant.

The Board will then discuss the application and a vote will be taken.

It was further explained to the public in attendance, applicants, objectors and interested parties that this meeting is not a final vote on any item. The date of the next meeting was given as Monday, June 1st, at 4:30 PM in Conference Room A of this building. The public in attendance, applicants, objectors and

interested parties were instructed that they could contact Sandra Hawthorne in the Zoning Office for any future information and that her phone number was listed on the top of the agenda which was made available to all those in attendance at the beginning of the meeting.

A **MOTION** was made by Scott Sanders to **APPROVE** the minutes of the April 21st meeting as submitted. The Motion was **SECONDED** by Julio Salgado and **CARRIED** by a vote of 6-0.

016-09 **3780 East State Street**
Applicant Tabu Nightclub / John Kennedy
Ward 10 **Special Use Permit** for a nightclub in a C-2, Limited Commercial District
 Laid Over from April meeting

This item was Laid Over at the April meeting to allow Staff to provide a copy of the of the Miracle Mile plan to the Board. A letter from the President of the Miracle Mile, Peter Roche, stating they were opposed to the approval of this application based on the past history on this property was received prior to this meeting and also provided to the Board.

James Funk and John Kennedy, Applicants, were present. This item was addressed in detail at the Liquor Advisory Board meeting held prior to this meeting, this date. The Board felt the information presented previously was sufficient for consideration of this matter.

The Board had no questions. No Objectors came forward at this meeting; however, those presented at the Liquor Advisory Board meeting were recognized.

Staff Recommendation remains at Denial. Ms. Roberts stated the 10 conditions of approval assigned at the Liquor Advisor Board would also be relevant to this item should the Board Approve.

A **MOTION** was made by Scott Sanders to **APPROVE** the Special Use Permit for a nightclub in a C-2, Limited Commercial District at 3780 East State Street with the 10 conditions of approval assigned to this addressed item at the May 19 Liquor Advisory Board hearing held prior to this meeting. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote of 6-0.

Approval is subject to the following conditions:

1. Hours of operation shall be limited to 8:00 PM to 2:00 AM Wednesday through Saturday, and Sunday 12:00 PM to Midnight.
2. Security shall be provided at a minimum of 1 per 50 patrons.
3. The business shall operate according to the submitted business and security plan.
4. The business shall maintain a parking agreement with the adjacent property for a minimum of 50 parking spaces or modification of Special Use Permit approved by City Council.
5. The property shall maintain a maximum capacity of 450 people unless reduced as determined by the Fire Department.
6. The interior layout of the business shall be consistent with the submitted site plan, Exhibit K.
7. All applicable building and liquor codes shall apply.
8. The business shall operate in conformance with the submitted dress code.
9. The use of the property shall not detrimentally effect the surrounding neighborhood and businesses or unduly burden the City of Rockford Police Department.
10. The business shall provide parking lot patrol and security during hours of operation and until the parking lot is cleared of all patrons.

ZBA 016-09
Findings of Fact for a Special Use Permit
For a Nightclub
In a C-2, Limited Commercial District at
3780 East State Street

Approval of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the C-2 Zoning District.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use does conform to the applicable regulations of the C-2 Zoning District in which it is located.

018-09 6838 East State Street

Applicant Alpine Bank / Lesly Couper

Ward 1 **Variation** to increase the number of allowable wall signage from four (4) to five (5) in a C-2, Commercial Community Zoning District

The subject property is located on the northwest corner of East State Street and Deane Drive and is Alpine Bank. Lesly Couper, VP of Marketing for Alpine Bank, reviewed the request for Variation. This structure has five facades. Ms. Couper explained the desire to add a sign for Alpine Trust and Investment Group, which is a part of Alpine Bank to identify their association and location. She stated as a small bank it is difficult to compete with large investment groups, but by identifying this service they hope to increase awareness in what Alpine Bank has to offer.

Staff Recommendation was for Denial. No Objectors or interested parties were present.

Mr. Roszkowski asked the Applicant if they would consider giving up one of the other signs to make room for the proposed signage. Ms. Couper stated she would have to bring this question back to her investors. He feels the existing and proposed signs would be too close together and feels they would be more appropriate on the State Street face. Ms. Roberts indicated Staff had this same concern and this was a consideration of Staff's recommendation for Denial.

The Applicant was agreeable to having the Board approve with the removal of one sign as discussed. It was explained to Ms. Couper that if her investors felt this was a problem and reluctant to do so, the item could be referred back to the Zoning Board at a future date.

The recommendation from the Board was to eliminate the existing southwest sign, relocate the southeast sign to the south façade, and the northeast and northwest façade signs will remain as is. This will allow for the proposed sign, and maintain compliance with the Ordinance.

A **MOTION** was made by Alicia Neubauer to **DENY** the Variation to increase the number of allowable wall signage from four (4) to five (5) in a C-2, Commercial Community Zoning District at 6838 East State Street. The Motion was **SECONDED** by Julio Salgado and **CARRIED** by a vote of 6-0.

ZBA 018-09
Findings of Fact for a Variation
to Increase the Number of Allowable Wall Signage
From Four (4) to Five (5)
In a C-2, Commercial Community Zoning District at
6838 East State Street

Denial of this Variation is based upon the following findings:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would not result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. The conditions upon which a petition for this Variation are based are not unique to the property for which the Variation is sought and are applicable, generally, to other property within the same zoning classification.
3. The purpose of this Variation is based exclusively upon a desire to increase the value or income potential of the property.
4. The alleged difficulty or hardship is not caused by this Ordinance and has been created by any persons presently having an interest in the property or by any predecessor in title.
5. The granting of this Variation will be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed Variation will impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair the property values within the neighborhood.

019-09 803 Starview Court

Applicant Mike Zahniser

Ward 14 **Variation** to increase the maximum square footage for an accessory building from 720 square feet to 1276 square feet

Variation to increase the maximum height for an accessory building from 18 feet to 21 ½ feet in an R-1, Single-Family Residential District

The subject property is located west of Woodbridge Drive, within a cul-de-sac. The Applicant has received violations for constructing a 1,276 square foot garage, expanding a driveway with gravel, and installation of a fence without permits, and has been cited several times for vehicles and overhaul trailers on the property. The building permit for the construction of the garage was denied.

Mike Zahniser and Lindsey Valenza were present. They have lived at this property since August 2000. Mr. Zahniser stated he is self-employed and has a siding and windows business. Mr. Zahniser stated they have 2 trucks and a trailer, none larger than a B plate. The garage is under construction without a permit and a stop work order has been placed on it. Mr. Zahniser stated there is a power station behind the home, and the garage will block this view. The roof of the garage will match the existing roof of the home. He stated he will redo the existing driveway and the addition to the back with new concrete.

Mr. Zahniser agreed they have had a lot of issues in the last two years with code enforcement. Ms. Roberts stated the applicant has been cited for having vehicles larger than B plates on the property as outlined in the Staff advisory report.

Mr. Sanders stated he is not agreeable to the additional height. Mr. Sockwell asked how many vehicles the applicant had on the property and Mr. Zahniser responded from the audience. He was asked to come forward for the record, and stated he had 2 pick ups, a van, and a SUV. He also has one employee, who comes to the home to pick up the vehicles and then parks his own vehicle in front of the home. Mr. Sockwell asked if he was running the business out of the house. Mr. Zahniser stated he is not planning to run a business out of the home. However, Mr. Zahniser stated he is incorporated and when Attorney Partridge asked what address was on the business license he stated it was his home. Ms. Roberts stated for the record it should be noted that if the business is run out of the home, employees would not be permitted to come to the residence. She further explained the Home Occupation permit, and stated this type of business would not be allowed, nor is a home occupation business allowed in an accessory building. Attorney Partridge stated what the Applicant has described is clearly a home business that he is operating.

Mr. Sanders wished to verify if the Board was asked to determine whether this was a home business. Ms. Roberts explained the request before the Board was for a Variation for the height and square footage of the structure. If approved, some of the impervious surface requirements would have to be met by removal. She further stated the drawings submitted by the Applicants did not show all of the structures on the property. Jon Hollander estimated approximately 7,000 square feet of the property is structured and this is over the allowable. He also verified the breezeway built on the property is not shown on the drawings as well.

Mr. Zahniser again spoke from the audience and was again asked to come forward. He stated the structure will not be attached and that the existing pool could be filled in if required.

Attorney Partridge read from the Ordinance stating an accessory structure could not be part of a home business. He further stated facts brought out at this hearing strongly suggest the Applicant is operating an illegal home based business. He stated an application for a home business such as the Applicant is operating would be denied.

Staff Recommendation is for Denial. No Objectors or interested parties were present.

A **MOTION** was made by Craig Sockwell to **DENY** the Variation to increase the maximum square footage for an accessory building from 720 square feet to 1276 square feet; and to **DENY** the Variation to increase the maximum height for an accessory building from 18 feet to 21 ½ feet in an R-1, Single-Family Residential District at 803 Starview Court. The Motion was **SECONDED** by Aaron Magdziarz and **CARRIED** by a vote of 5-1 with Scott Sanders voting Nay.

ZBA 019-09
Findings of Fact for a Variation
To Increase the Maximum Square Footage for an Accessory Building
From 720 Square Feet to 1,276 Square Feet
In an R-1, Single-Family Residential District at
803 Starview Court

Denial of this Variation is based upon the following findings:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would not result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. The conditions upon which a petition for this Variation are based are not unique to the property for which the Variation is sought and are applicable, generally, to other property within the same zoning classification.
3. The purpose of this Variation is based exclusively upon a desire to increase the value or income potential of the property.
4. The alleged difficulty or hardship is not caused by this Ordinance and has been created by any persons presently having an interest in the property or by any predecessor in title. The applicant built a structure without a building permit and receiving zoning clearance of it.
5. The granting of this Variation will be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed Variation will impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair the property values within the neighborhood.
7. The proposed Variation does not comply with the spirit and intent of restrictions imposed by this Ordinance.

With no further business to come before the Board, the meeting was adjourned at 7:55 PM

Respectfully submitted,
Sandra A. Hawthorne, Administrative Assistant
Zoning Board of Appeals